

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
SBC Communications, Inc. and )  
Southern New England )  
Telecommunications Corporation )  
 )  
for FCC Consent for )  
Proposed Transfer of Control )

CC Docket No. 98

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PETITION TO DENY  
OF  
OMNIPOINT COMMUNICATIONS, INC.

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March 30, 1998

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**SUMMARY**

Omnipoint Communications, Inc. ("Omnipoint") requests denial of the captioned applications of SBC Communications, Inc. ("SBC") and Southern New England Telecommunications Corporation ("SNET") for Commission approval of the transfer of control to SBC of SNET and its affiliates and subsidiaries to SBC which hold various radio licenses and other authorizations.

SBC was recently found to have violated Section 2 of the Sherman Act. What this Commission has characterized as SBC's "proven monopolistic conduct" precludes SBC from demonstrating the character qualifications necessary to acquire and operate the additional radio licenses and other Commission authorizations held by SNET.

Moreover, the SBC organization continues to act in an anticompetitive manner towards wireless operators. For example, SBC remains the only regional Bell Operating Company that has denied Omnipoint access to the billing and collection functions essential for calling party pays ("CPP") services. In addition, SBC's wireless affiliates have refused to allow other wireless carriers, such as Omnipoint, to collocate on their existing structures, including cases where alternative tower options are lacking.

Finally, as a general matter, further concentration of market power in the hands of SBC in either wireline and/or wireless telecommunications service markets is not in the public interest. SBC has discriminated against Omnipoint and in favor of SBC's own

wireless operations, and has demonstrated an animus unique among local exchange carriers ("LECs") to the pro-competitive goals of the Telecommunications Act of 1996. As a matter of public policy, the Commission should reject SBC's attempt to superimpose its anticompetitive philosophy and behavior upon SNET and its wireless and wireline operations.

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In the Matter of	)	
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<b>SBC Communications, Inc. and</b>	)	
<b>Southern New England</b>	)	
<b>Telecommunications Corporation</b>	)	CC Docket No. 98-25
	)	
for FCC Consent for	)	
Proposed Transfer of Control	)	
	)	

**PETITION TO DENY**

Omnipoint Communications, Inc. ("Omnipoint") requests denial of the captioned applications of SBC Communications, Inc. (SBC) and Southern New England Telecommunications Corporation (SNET) for Commission approval of the transfer of control of SNET and its affiliates and subsidiaries to SBC. SNET and its affiliates and subsidiaries hold various radio licenses and other authorizations from the Commission. This Petition is filed in accordance with the schedule established in the Commission's Public Notice released February 28, 1998.<sup>1</sup>

**Interest of Omnipoint**

Omnipoint is the Pioneer's Preference licensee for the A Block Personal Communications Service ("PCS") license covering the New York Major Trading Area ("MTA"). It also holds a large number of other PCS licenses, including licenses for PCS markets in Texas,

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<sup>1</sup> SBC Communications Inc. and Southern New England Telecommunications Corporation (SNET) Seek FCC Consent for a Proposed Transfer of Control, Public Notice, CC Docket No. 98-25, DA 98-381 (Feb. 28, 1998). ["SBC/SNET Public Notice"]

Connecticut and other portions of the northeastern and southwestern United States.

Omnipoint's first priority has been the build-out of its northeastern markets. As a result, Omnipoint will be dependent on SNET's Connecticut local exchange and related facilities in the near future. It will also depend upon similar facilities of SBC (and other LECs) as it builds out its network and provisions service in other areas of the country. Omnipoint is a competitor of SBC and SNET in wireless markets.

#### **Antitrust Violation And Basic Character Qualifications**

Section 310(d) of the Communications Act requires the Commission to find that the public interest will be advanced by a proposed transfer of control of a company holding radio licenses.<sup>2</sup> This determination includes consideration of the legal and character qualifications of the transferee, as well as the effect of the transfer upon competition.<sup>3</sup> The Commission has held that three areas of adjudicated non-FCC misconduct require Commission inquiry regarding basic character qualifications -- specifically: (a) felonies; (b) fraudulent representations to governmental units; and (c) violations of antitrust laws or other laws protecting

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<sup>2</sup> 47 U.S.C. § 310(d).

<sup>3</sup> Craig O. McCaw, Transferor, and AT&T Co., Transferee, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5844 (1994); SBC/PacTel Order paras. 11 and 12.

competition.<sup>4</sup>

The burden of proof that a proposed transfer of control of a licensee will serve the public interest, and will not injure competition, has been placed wholly and unequivocally upon applicants like SBC and SNET.<sup>5</sup>

In Great Western Directories, Inc. v. Southwestern Bell Corp.,<sup>6</sup> SBC recently was found by a federal civil jury and the U.S. Court of Appeals for the Fifth Circuit to be guilty of unlawful monopolization and attempted monopolization in violation of Section 2 of the Sherman Act. The jury awarded, and the court upheld, a multi-million dollar verdict because SBC had acted to extend its local exchange monopoly into the potentially competitive telephone directory market by means of a price squeeze.<sup>7</sup> The jury and court determined that SBC had raised the prices of essential subscriber list information ("SLI") to all directory publishers (including SBC's own publishing affiliate), while SBC's directory publishing affiliate had cut its advertising prices substantially. In

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<sup>4</sup> Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, File No. NSD-L-96-10, Memorandum Opinion and Order, FCC 97-286, para. 236 and n. 446 (rel. Aug. 14, 1997) ["BA/NYNEX Order"].

<sup>5</sup> 47 U.S.C. § 309(e); BA/NYNEX Order paras. 3, 29; AT&T Co. and MCI Communications Corp. Petitions for the Waiver of the International Settlements Policy, Memorandum Opinion and Order, 5 FCC Rcd 4618, 4621 para. 19 (1990).

<sup>6</sup> 63 F.3d 1378, 1387 (5th Cir. 1995), petition for rehearing en banc granted in part and denied in part, 74 F.3d 613 (5th Cir. 1996), vacated pursuant to settlement, cert. denied, 117 S. Ct. 26 (1996).

<sup>7</sup> Id. at 1387.

addition, the jury and court found that SBC had furnished SLI to competing directory publishers on numerous restrictive terms and conditions that were anticompetitive and that had no legitimate business justification.<sup>8</sup>

In its section 214 review of the SBC/PacTel merger, the Commission stated that it was "taking seriously . . . the proven monopolistic conduct by SBC in its home region," but declined in the SBC/PacTel Order to impose conditions on its approval of the merger at issue therein.<sup>9</sup> As part of its listing of the regulatory remedies available for anticompetitive misconduct (both state and federal), the Commission noted that it "may impose forfeitures and/or revocation of licenses."<sup>10</sup>

In its SBC/PacTel Order, the Commission did not consider the adjudicated antitrust violation in connection with SBC's character qualifications to acquire or hold radio licenses under Title III of the Communications Act. In fact, the Commission assumed that the Great Western Directories holdings were not relevant to SBC's basic character qualifications for Title III purposes, stating that "[n]o party claims that SBC lacks any of the [citizenship, character, and financial and technical] qualifications [to hold radio licenses], and we find that [SBC] possesses those

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<sup>8</sup> Id.

<sup>9</sup> Applications of Pacific Telesis Group, Transferor and SBC Communications, Inc., Transferee, Report No. LB-96-32, Memorandum Opinion and Order, 12 FCC Rcd 2624, paras. 62-63 (rel. Jan. 31, 1997) ["SBC/PacTel Order"].

<sup>10</sup> Id. at para. 63.



qualifications."<sup>11</sup>

However, Sections 310(d) and 308 of the Communications Act require the Commission to consider the character and other basic qualifications of applicants for radio authorizations in a far more detailed and rigorous manner than the qualifications of applicants for Section 214 and other Title II authorizations. For example, Section 308(b) requires SBC and other applicants to demonstrate that they are qualified by virtue of "citizenship, character, and financial, technical, and other operations" to operate the subject radio stations.<sup>12</sup> No counterpart requirement for a showing of character and other basic qualifying factors is expressly included in Title II of the Act.

Had the Commission reviewed SBC's antitrust violations in the SBC/PacTel merger proceeding under the more exacting standards of Title III, its inquiry would have been considerably more expansive than its Title II review. For instance, in past cases dealing with antitrust violations by Commission licensees, the Commission has considered: (a) the nature of the misconduct; (b) whether it was communications-related; (c) the frequency of the misconduct; and (d) the currency of the misconduct and the relationship to the applicant.<sup>13</sup> Instead, the Commission's SBC/PacTel Order assumed that no Title III basic qualifying issues had been raised, and

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<sup>11</sup> Id. at para. 11.

<sup>12</sup> 47 U.S.C. § 308(b).

<sup>13</sup> Baker Protective Service, Inc., Order, 59 RR 2d 1141 para. 13 (CCB 1986).

allowed SBC to side-step its adjudicated Great Western Directories antitrust violation in a manner which the Commission characterized as "notable for its brevity."<sup>14</sup> Rather than requiring SBC to bear the burden of demonstrating that SBC still possessed, in light of its adjudicated antitrust violation, the basic character qualifications necessary to acquire radio licenses, the Order required a party opposing the SBC/PacTel merger to produce evidence that SBC's anticompetitive conduct would occur again.<sup>15</sup>

Here, Omnipoint requests that the Commission consider the impact of SBC's adjudicated antitrust violation in Great Western Directories upon SBC's character and other basic Title III qualifications to acquire control of the additional radio licenses presently held by SNET. Moreover, it asks the Commission to place the burden of proof of demonstrating these basic qualifications right where it belongs -- upon SBC and SBC alone.<sup>16</sup>

#### **SBC's Continuing Anticompetitive Practices**

Omnipoint does not believe that SBC's anticompetitive practices have been confined to, or that they ended with, the Great Western Directories proceeding. Rather, at the present time, the SBC organization is hampering and undermining Omnipoint's ability to compete with SBC's cellular affiliates in various wireless

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<sup>14</sup> SBC/PacTel Order at para. 63.

<sup>15</sup> Id. at para. 61.

<sup>16</sup> Policy Regarding Character Qualifications in Broadcast Licensing, Policy Statement and Order, 5 FCC Rcd 3252 para. 6 (1990).

markets in several ways, including: (a) SBC has refused to furnish billing and collection services that Omnipoint has requested for "calling party pays" (CPP) services, while SBC provides access to similar essential services to its own cellular affiliates; and (b) SBC's cellular affiliate has refused to permit Omnipoint to co-locate its PCS antennas on the affiliate's towers in numerous New England communities where it is extremely difficult, if not impossible, to obtain permission to construct new towers.

Calling Party Pays. Omnipoint's intention is to offer its customers a nationwide CPP service in which calls to Omnipoint customers are charged to the calling party and contained in the calling party's bill for local service. Whereas other Bell Operating Companies (BOCs) and local exchange carriers (LECs) have agreed to provide Omnipoint with the billing and collection services necessary to support a national CPP service in their markets, SBC has refused to provide these billing and collection services for calls made by its local exchange customers. However, SBC provides billing and collection services for its cellular affiliates, offering local exchange customers a "joint billing" service in which both local wireline and cellular calls appear on the same SBC monthly bill.

As the Commission is well aware, the ability to offer CPP service constitutes an important advantage in the increasingly competitive wireless market. In its Calling Party Pays Notice of Inquiry, the Commission recognized that PCS and other Commercial Mobile Radio Service ("CMRS") providers seeking to implement CPP

must obtain billing and collection from LECs. The Commission expressly noted that "the LEC must be willing and able to provide the CMRS carrier with this billing service or sufficient information for the CMRS carrier to bill the calling party directly."<sup>17</sup>

SBC has refused to accept billing information from Omnipoint for incorporation in its local bills. While SBC has offered to provide Omnipoint with access, for a fee, to the information in SBC's Billing Name and Address (BNA) database, this option is unreasonable and discriminatory for several reasons. First, the few number of calls from SBC's local calling regions to Omnipoint's current coverage area along the eastern seaboard cannot possibly justify the cost of establishing a billing and collection operation. This operates as an unreasonable practice in light of the arrangements that Omnipoint has made with other LECs, as well as the fact that SBC's costs of this billing are already recovered through its regulated services -- a luxury not available to Omnipoint. Second, by offering a joint billing service only to its own cellular affiliates, SBC discriminates in favor of those affiliates and against Omnipoint, to the competitive detriment of Omnipoint.

The Commission has found that validation and billing service for joint use calling cards is a communications service subject to Title II requirements because it is incidental to a communications

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<sup>17</sup> Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, Notice of Inquiry, FCC 97-341 para. 3 (rel. Oct. 23, 1997).

service and because it is uniquely provided by LECs.<sup>18</sup> The same is true with respect to billing and collection for CPP service, because the fact that the LEC is the only entity capable of billing and collecting from most calling parties renders the billing and collections services essential for provision of CPP services. In addition, the Commission has Title I jurisdiction over the billing and collection services provided by LECs to unaffiliated carriers.<sup>19</sup>

The Commission has also found that anticompetitive practices, particularly discriminatory behavior, pose a substantial threat to full and fair competition in the CMRS marketplace, and that LECs have the ability and incentive to engage in such anticompetitive behavior.<sup>20</sup> As a result, the Commission has required "Title II common carrier services . . . acquired [by an in-region CMRS provider] from the affiliated LEC [to be] made available to all other carriers, including CMRS providers, on the same rates, terms and conditions."<sup>21</sup>

SBC's refusal to furnish Omnipoint with the essential billing

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<sup>18</sup> Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 3528, 3532 (1992).

<sup>19</sup> Detariffing of Billing and Collection Services, Report and Order, 102 FCC 2d 1150, 1169 (CCB 1985).

<sup>20</sup> Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Report and Order, 12 FCC Rcd 15668, 15692 (WTB Oct. 3, 1997) ["CMRS Safeguards Order"]

<sup>21</sup> Id. at 15693.

and collection services provided by SBC to its own cellular affiliate constitutes unlawful discrimination under Section 202(a) of the Communications Act, as well as anticompetitive behavior in violation of the CMRS Safeguards Order. It constitutes a separate ground for denial of the subject SBC applications.

Co-located Antenna Facilities. SBC's wireless affiliate has not dealt fairly with tower collocation requests in New England, to the detriment of other wireless providers and particularly new entrants. While the SBC cellular affiliate in New England has no formal process for approving collocation of facilities on its towers, it has been Omnipoint's experience that SBC will only permit collocation on a one-for-one reciprocal basis with carriers who have towers on which SBC is interested in mounting antennas (normally, towers of heights of 150 feet or more. Like the restrictions in Great Western Directories, these conditions have no legitimate business justifications and are anticompetitive.

Unfortunately for new entrants like Omnipoint, SBC has had at least a ten year head start in obtaining zoning approvals and constructing towers. The current proliferation throughout the Northeast of towers belonging to incumbent providers such as SBC has largely exhausted the goodwill of local zoning boards. New tower siting approvals are now much more difficult to obtain, and usually contain restrictions on height and placement that increase their cost. In contrast to SBC, SNET has been very reasonable in providing collocation on existing towers.

SBC's refusal to furnish Omnipoint with reasonable collocation

constitutes anticompetitive behavior in violation of the CMRS Safeguards Order. It constitutes a separate ground for denial of the subject SBC applications.

### **Overall Adverse Impact Upon Competition**

As noted above, Section 310(d) of the Communications Act requires the Commission to determine the legal and character qualifications of the proposed transferee, as well as the effect of the proposed transfer upon competition, in considering whether the public interest will be advanced by a proposed transfer of control of a company holding radio licenses. In addition, Sections 7 and 11 of the Clayton Act empower the Commission to disapprove acquisitions of common carriers engaged in wire or radio communications "where in any line of commerce, in any section of the country" the effect of such acquisition may be "substantially to lessen competition, or to tend to create a monopoly."<sup>22</sup>

As noted in the BA/NYNEX Order, the Commission must be especially concerned about mergers between incumbent monopoly local exchange service providers (i.e., SNET) and possible rivals (i.e., SBC) during the initial period of implementation of the Telecommunications Act of 1996.<sup>23</sup> Whereas a primary purpose of the 1996 Act is to lower barriers to entry into the telecommunications industry, this process is only beginning and is nowhere near

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<sup>22</sup> 15 U.S.C. §§ 18, 21(a); SBC/PacTel Order para. 12.

<sup>23</sup> BA/NYNEX Order at para. 4.

completion.<sup>24</sup> There still remain substantial barriers to entry into local exchange and other telecommunications markets, and many such barriers are expected to remain even after the 1996 Act is fully implemented.<sup>25</sup>

In considering SBC's application for acquisition of control of SNET, the Commission must determine whether the elimination through acquisition of a major potential entrant (SBC) into SNET's wireline and wireless markets would adversely affect competition. The Commission has recognized that acquisition of a potential competitor is likely to have adverse competitive effects where: (1) the market is highly concentrated; (2) there are few other potential entrants that are equivalent to the company that proposes to enter by acquisition; (3) the company entering the market by acquisition would have entered the market but for the acquisition; (4) the acquiring company had other feasible means of entry; and (5) such alternative means of entry offer a substantial likelihood of ultimately producing deconcentration in the target market or other significant pro-competitive effects.<sup>26</sup>

The burden is on SBC, as the applicant, to define the relevant market.<sup>27</sup> SBC has not explicitly defined a market, but rather has suggested implicitly that the relevant market is wireline local

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<sup>24</sup> Id. at para. 5.

<sup>25</sup> Id. at para. 6; SBC/PacTel Order at para. 23.

<sup>26</sup> SBC/PacTel Order at para. 18; United States v. Marine Bancorporation, 418 U.S. 602, 630-31 (1974).

<sup>27</sup> BA/NYNEX Order at para. 49.



exchange telephone service in Connecticut. In this market, SNET holds a monopoly, which will be transferred intact to SBC.

SBC's implicit market fails to encompass the related wireless telecommunications market in Connecticut (where SNET has a major presence), and the wireless markets in adjacent New England states (where both SNET and SBC are prominent carriers).

SBC has denied any plans to enter the Connecticut local exchange market, but its current business practices suggest otherwise. Specifically, SBC's wireless presence in the areas surrounding the SNET service area is so pervasive that it must be assumed that SBC has a substantial interest in expanding service into the SNET area, notwithstanding its protestations to the contrary. As shown in Attachment A, SBC currently provides wireless service in Worcester, MA (which borders Connecticut); in six markets (Boston, MA; Albany-Schenectady, NY; Utica-Rome, NY; Glens Falls, NY; Massachusetts RSA 2 - Barnstable; and New Hampshire RSA 2 - Carroll) that are within 100 miles of Connecticut; in five markets (Baltimore, MD; Syracuse, NY; Maryland RSA 2 - Kent; New York RSA 1 - Jefferson; and New York RSA 4 - Yates) within 200 miles of Connecticut; and seven markets (Washington, DC; Buffalo, NY; Rochester, NY; Virginia RSA 10 - Frederick; Virginia RSA 11 - Madison; Virginia RSA 12 - Caroline VA; and West Virginia RSA 4 - Grant) within 350 miles of Connecticut.

In addition, SNET provides cellular service in Massachusetts markets (Springfield-Chicopee-Holyoke, MA; New Bedford-Fall River,

MA; Pittsfield, MA; and the Massachusetts 1 RSA) that are in close proximity to the SBC wireless markets in Massachusetts.

The Commission has found that SBC is likely to enter markets where it has facilities, an existing customer base (e.g., from cellular activities) and brand name recognition.<sup>28</sup> In analyzing the Bell Atlantic acquisition of NYNEX, the Commission determined that Bell Atlantic was a likely entrant into the NYNEX service area, based largely on the proximity of Bell Atlantic's service areas to NYNEX's service areas.<sup>29</sup>

Given SBC's significant wireless presence in New England and adjoining areas and the close proximity of the SBC and SNET wireless service areas, the Commission should question the accuracy of the representations on page 21 of the subject Form 490 that SBC and SNET are in non-adjacent areas, do not compete, and have no plans to compete in each other's territory. Rather, SBC's nearby wireless facilities and customer base, as well as its brand name recognition, make it a likely potential entrant into SNET's Connecticut wireline and wireless markets.

These markets are highly concentrated. In particular, the Connecticut wireline local exchange market differs little from other wireline markets, where incumbent LECS have approximately 99.5% of local exchange service.<sup>30</sup>

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<sup>28</sup> SBC/PacTel Order at para. 27.

<sup>29</sup> BA/NYNEX Order at paras. 73-78.

<sup>30</sup> SBC/PacTel Order at para. 23; Implementation of the Telecommunications Act of 1996, Accounting Safeguards Under the Telecommunications Act of 1996, Notice of Proposed Rulemaking, 11

There are few other potential entrants that are equivalent to SBC. The Commission has already noted that an out-of-region LEC entering a market has advantages that other potential entrants do not have.<sup>31</sup> SBC is geographically positioned to enter the market, and has shown an intense interest in the Mid-Atlantic and New England geographic areas. In addition, SBC has certain inherent advantages arising from its role as an incumbent LEC provider which would make entry into the Connecticut market through internal expansion easier, quicker, and less costly than would be the case with most other potential entrants.

The inherent advantages noted by the Commission also demonstrate that SBC had a feasible alternative means of entry. It need not enter by means of acquisition.

There are few other LECs as favorably situated as SBC to enter the market through internal expansion, and the number has dwindled through the previous acquisitions of PacTel and NYNEX. The Commission addressed this question in the previous SBC/PacTel and NYNEX/Bell Atlantic proceedings, noting that with each acquisition, the number of potential entrants declines by one. The Bell Atlantic/NYNEX merger already eliminated one likely potential entrant into the Connecticut market. Thus, the number of potential entrants is already limited. This proposed acquisition would eliminate a second likely potential entrant. Where there is a monopoly, as is clearly the case with SNET's Connecticut local

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FCC Rcd 9054, 9058 (CCB 1996).

<sup>31</sup> See, e.g., BA/NYNEX Order at para. 107.

exchange service, the loss of a single major potential competitor can have a significant adverse competitive effect.<sup>32</sup> As Areeda and Hovenkamp write, "merger with a potential competitor acquires special significance when one of the firms is a monopolist.... As a general matter, a monopolist's acquisition of a 'likely' entrant into the market in which monopoly power is held is presumptively anticompetitive."<sup>33</sup> The effect is the same where the potential entrant acquires the incumbent monopolist. Either way, the market no longer benefits from a potential competitor that may erode the power of the monopolist.

Entry through internal expansion rather than acquisition of the current monopoly provider of local wireline service would have substantially deconcentrated the market, and otherwise exerted a pro-competitive influence on the market. SBC is an aggressive competitor in the markets in which it competes. Its de novo entry in Connecticut would exert a significant pro-competitive influence on the market. By contrast, its acquisition of SNET would merely cement SNET's monopoly control of the market.<sup>34</sup>

Thus, all five elements of the doctrine of actual potential competition are present with respect to SBC's acquisition of SNET. SBC is a likely entrant into a highly concentrated market, currently controlled by a monopolist protected by high entry

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<sup>32</sup> BA/NYNEX Order at para. 66.

<sup>33</sup> P. Areeda and H. Hovenkamp, 3 Antitrust Law § 170d at 134-36 (rev. ed. 1996).

<sup>34</sup> See, e.g., BA/NYNEX Order at para. 11.

barriers. There are few other potential entrants; and fewer as a result of the PacTel and NYNEX acquisitions. SBC has substantial entry advantages shared by few, if any, other entities. De novo entry by SBC would have a significant de-concentrating and pro-competitive effect.

In the recent NYNEX/Bell Atlantic proceeding, the Commission was concerned by the loss of potential competition. It stated:

we believe that Applicants have failed to carry their burden of showing, under the public interest standard, that entry would be sufficiently easy to mitigate the potential harms to competition from merging the leading and no less than fifth most significant participant in the market for providing telecommunication services to residential and small business customers. Applicants have also not carried their burden of demonstrating under the public interest standard, that efficiencies generated by the merger will mitigate entirely the potential competitive harms.<sup>35</sup>

In the NYNEX/Bell Atlantic proceeding, the Commission determined that the applicants did not meet their burden of proof, but allowed the merger to proceed because the parties agreed to accept certain conditions.<sup>36</sup> The Commission warned, however, that further reductions "become more and more problematic as the potential for coordinated behavior increases and the impact of individual company actions on our aggregate measures of the industry's performance grows."<sup>37</sup> It concluded "although we do not find the reduction in major incumbent LECs caused by the proposed

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<sup>35</sup> BA/NYNEX Order para. 12.

<sup>36</sup> Id. at para. 156.

<sup>37</sup> Id. para. 156.

merger sufficient to render it against the public interest, further reductions in the number of Bell Companies or comparable incumbent LECs would present serious public interest concerns."<sup>38</sup>

SBC's proposed acquisition of SNET will result in the disappearance of yet another major competitor. This reduction will impair competition in Connecticut, as well as further reduce the pool of potential entrants into other markets where incumbent LECs have monopolies.

In addition to eliminating an actual potential entrant, SBC's proposed acquisition of SNET will leave the Connecticut wireline and wireless market vulnerable to substantial misuse of SBC's monopoly over local telephone service. SBC has already shown hostility towards opening its network as required under Sections 251, 252 and 271 of the Telecommunications Act.<sup>39</sup> It also has been adjudicated to have violated Section 2 of the Sherman Act in the Great Western Directories proceeding. And SBC has hindered the efforts of Omnipoint to compete in wireless markets by denying Omnipoint access to billing and collection functions essential for CPP services; and by refusing to permit Omnipoint to co-locate its PCS antennas on the existing towers of SBC wireless affiliates.

This proposed transaction will enable SBC to inflict substantial injury on Omnipoint in Connecticut, for the benefit of

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<sup>38</sup> Id. at para. 156.

<sup>39</sup> 104 P.L. 104, 110 Stat. 56 (codified at 18 U.S.C. §§ 151 - 614) ["1996 Act"]. For an example of this animus, see SBC Comms. Inc. v. F.C.C., 981 F. Supp. 996, 1997 U.S. Dist. LEXIS 20725 (N.D.Tx. 1997).

SBC's combined wireline and wireless operations. SBC will be able to do so by discriminating with respect to the pricing of interconnection, by discriminating with respect to the provision of services, and by delaying the issuance of telephone numbers to Omnipoint. SBC's previous efforts to stifle competition, lawful and unlawful, indicate that SBC's compliance with its duties as an LEC monopolist will be begrudging at best, if not actually evaded.

Certainly, SBC's anticompetitive actions will be somewhat restrained by regulation. However, regulation is but a poor substitute for real competition.<sup>40</sup> It would be far better to deny the present applications, so that SBC is not put in a position to misuse SNET's monopoly power in the first place.

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<sup>40</sup> BA/NYNEX Order at para. 95.

**CONCLUSION**

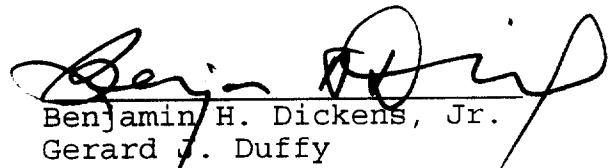
SBC lacks the character qualifications to acquire SNET's radio license. SBC has violated the antitrust laws, and continues to engage in anticompetitive practices designed to thwart the legitimate efforts of new entrants into markets in which it holds monopoly or near-monopoly positions. Moreover, a merger between SBC and SNET will further consolidate SBC's market concentration and will frustrate the pro-competitive goals of current telecommunications law. As a matter of public policy, the Commission should deny SBC's attempt to extend its hegemony.

Respectfully submitted,



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**EXHIBIT A**